

**Editor's note: Reconsideration denied by Order dated July 25, 1983; Appealed -- summary judgment for DOI as time-barred; aff'd No. 84-2411 (10th Cir. Sept. 30, 1986), 801 F.2d 1250**

GEOSEARCH, INC.  
LLOYD CHEMICAL SALES, INC.  
v.  
RESOURCE SERVICE CO., INC.  
BUREAU OF LAND MANAGEMENT

IBLA 80-120, 80-316, 80-358

Decided March 9, 1983

Appeal from decision by Administrative Law Judge Michael L. Morehouse affirming decisions of the Bureau of Land Management dismissing protests against issuance of simultaneous oil and gas leases W-69701, W-64105, W-66787, and W-69700.

Recommended decision adopted; State Office decisions affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest

An undisclosed interest was not created in a person referring a customer to an oil and gas leasing service where the referring person had only a hope or expectancy that some financial benefit might result from the referral. Where there was no enforceable right in the referring party to share in the proceeds of a lease obtained through the simultaneous oil and gas leasing drawing held by the Department, there was no violation of the provisions of the sole party in interest regulation, 43 CFR 3102.7.

2. Administrative Procedure: Hearings -- Hearings -- Rules of Practice: Hearings

A request for postponement made at a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This

standard is not met by a request to postpone a hearing to obtain the testimony of additional witnesses when the need for the testimony was anticipated more than 1 month prior to the hearing and the party seeking postponement failed to file a proper motion at that time.

3. Oil and Gas Leases: Applications: Drawings

Protests against issuance of oil and gas leases were properly dismissed where the protests were unsupported by facts to show the successful drawees should have been disqualified and where there was no competent evidence offered to indicate a violation of regulations as claimed.

APPEARANCES: Melvin E. Leslie, Esq., for appellants; David B. Kern, Esq., for appellee Resource Service Company, Inc. 1/

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Appellants object to a September 27, 1982, recommended decision by Administrative Law Judge Michael L. Morehouse which proposes that this Board affirm the decision of the Wyoming State Office, Bureau of Land Management (BLM), dismissing protests filed on behalf of the second priority drawees in Wyoming simultaneous oil and gas lease drawings held in 1978 and 1979. Following dismissal of the protests by BLM appellants sought review by this Board. After action as described in the attached recommended decision, the appeals now before the Board were referred on July 16, 1981, to an Administrative Law Judge for hearing and recommended decision. A brief in support of objections to the recommended decision has been filed by appellants. Appellees have elected to stand on the recommended decision and upon briefs filed by appellees with the Administrative Law Judge.

[1] The recommended decision accurately summarizes the evidence gathered at the hearing and in depositions offered and admitted at the hearing, and correctly applies the applicable law to the facts found. The Board therefore adopts the recommended decision, attached as Appendix A, as the Board's opinion and decision in this appeal.

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1/ Mr. Leslie appears on behalf of Geosearch, Inc., and the second priority drawees interested in leases W-69701, W-64105, W-66787, and W-69700; Mr. Kern appears for Resource Service Company, Inc., and the first drawees of the same Wyoming leases.

Appellants' brief in opposition to the recommended decision advances arguments previously argued before the Administrative Law Judge, which are answered by the recommended decision. Appellants seek also to find in prior orders by this Board a limitation upon the factfinder which was exceeded during the conduct of the evidentiary hearing. This claim of error is without merit, as is appellants' renewed attempt to infer that, despite the facts shown, there is some impropriety, suggested by the circumstances of the parties, which ought to invalidate the leases to the first drawees, or entitle appellants to another hearing.

Thus, appellants argue, first, that the Administrative Law Judge improperly limited inquiry concerning lease W-69700 (Cherwin) by refusing to permit appellants to take the depositions of the drawee's brothers who were, together with the drawee, the sole stockholders in a lumber yard which had apparently supplied the filing fee used by the drawee in making his successful offer. The record on appeal does not support appellants' objection. Appellants' motion to be permitted to take depositions of the two brothers appears in the transcript at page 36 of the hearing conducted on March 23, 1982, by the Administrative Law Judge:

MR. LESLIE: They have an undisclosed interest, Your Honor, and if there isn't sufficient evidence here, I would move that I be given an opportunity to take a deposition of Mr. Cherwin's two brothers and examine their tax returns in respect to that.

JUDGE MOREHOUSE: My order that followed our conference telephone call back in January, I thought I disposed of all problems at that time. When this man testified to that effect, you were on notice at that time and you could have made motions to take further depositions, continue this case, et cetera, et cetera, but you didn't do it. And now you want me to continue this matter so you can take the depositions of Cherwin's brothers?

MR. LESLIE: Again, Your Honor, it goes back to the construction, I think, that has to be given of the order.

JUDGE MOREHOUSE: Are you making a motion?

MR. LESLIE: I am making a motion and the motion is this: That I be given an opportunity to take the depositions of the other co-owners of Chicago Millman's, Inc., and have that reported back to this particular -- to you, Your Honor, so that you can consider that deposition in considering whether Mr. Cherwin was the sole party and interest in respect to this offer.

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JUDGE MOREHOUSE: This matter has gone on a long time. I'm going to deny your motion. Not only is it outside the scope of the remand order, but even if it was within the scope of the remand order, you had an opportunity to move to take these depositions. You have had an opportunity to do this and you didn't do it, so I'm going to deny your motion.

(Tr. 36-38).

[2] In view of the fact that granting appellants' motion would necessarily have involved postponement of the hearing, the Judge's consideration of this request was governed by the following requirements of Departmental regulation 43 CFR 4.432(a):

In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement.

As the transcript quoted above demonstrates, no "extreme emergency" occurred which could not have been anticipated. Appellants' own statement of reasons makes it clear that appellants' counsel anticipated the need for additional depositions at the conclusion of Cherwin's deposition, more than one month prior to the hearing. Under the quoted regulation, Judge Morehouse was required to reject appellants' motion as untimely. See United States v. Mine Development Corp., 27 IBLA 238 (1976).

It is thus apparent there was no denial of an opportunity to present evidence. It appears instead there was a failure to prepare for hearing, the natural consequence of which was that the testimony of the two witnesses was not received. It is significant that appellants do not now, before this Board for the third time, offer any showing of the nature of the expected testimony of the two brothers whose statements are still claimed to be desired to be taken by them for use as evidence. The Judge ruled correctly when he denied appellants' motion for an extension of the proceedings to permit depositions.

[3] Appellants also contend, further arguing their objection to the proposed decision, that the record permits an inference the corporation held by the Cherwin brothers had an undeclared interest in lease W-69700 contrary to the provisions of 43 CFR 3102.7. This interest is to be presumed, according to appellants, from the fact that the only proof to the contrary was provided by the first drawee who positively denied that any other party had such an interest. No authority is provided to support the contention made that an inference of falsity attaches to this uncontroverted proof simply because the drawee has an interest in the lease. This matter is correctly decided by the recommended decision. It is apparent, as observed by appellees' brief dated June 4, 1982, at page 11, that "[a]fter over two and

one-half years of delay, three depositions, numerous affidavits, and an evidentiary hearing, the protesting parties in this proceeding have produced no competent evidence of violation of the Department's regulations governing the simultaneous oil and gas lease program." (Emphasis in original.)

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the recommended decision of Judge Morehouse is adopted by the Board and the decision denying appellants' protests is affirmed.

Franklin D. Arness  
Administrative Judge  
Alternate Member

We concur:

Douglas E. Henriques  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

September 27, 1982

GEOSEARCH, INC. and	:	WYOMING 64073, 64105,
LLOYD CHEMICAL SALES, INC.,	:	66787, 67767, 67982,
	:	69088, 69700, and 69701
Appellants	:	
v.	:	(IBLA 80-94, 80-120,
	:	80-316, and 80-358)
RESOURCE SERVICE COMPANY and	:	
BUREAU OF LAND MANAGEMENT,	:	Simultaneous Oil & Gas Leases
	:	
Respondents	:	

RECOMMENDED DECISION

Appearances: Melvin E. Leslie Esq., Salt lake City, Utah, for Appellants

David B. Kern Esq., Milwaukee, Wisconsin, Resource Services Co.,  
Inc., for Respondents

David B. Sonosky, Esq., Tulsa Oklahoma, for Cities Service Co.  
Alan H. Friedman, Esq., and Daniel Recht, Esq., Denver,  
Colorado for Coquina Oil Co.

Laura Payne, Esq., and Brock C. Akers, Esq., Houston, Texas, for  
General American Oil Co. of Texas

Lyle K. Rising, Esq., Office of the Solicitor, Department of the  
Interior, Denver, Colorado, for Bureau of Land Management

Before: Administrative Law Judge Morehouse

These cases arise from a series of simultaneous noncompetitive oil gas lease drawings in 1978 and 1979 by the Wyoming State Office, Bureau of Land Management (BLM). In each case, leases were issued to the first drawee, and thereafter protests were

filed on behalf of the second priority drawees. These protests were denied by BLM and appeals were filed to the Board of Land Appeals (Board). The Board, in three decisions, Lloyd Chemical Sales, Inc., 49 IBLA 392 (1980), Geosearch Inc., 50 IBLA 409 (1980), and Geosearch Inc., 51 IBLA 59 (1980), set aside the dismissals of the protests and remanded the cases to the State Office for further investigation. The BLM State Director, in turn, requested that the matters be referred to the Hearings Division for inquiry into the questions raised by the decisions. The Board agreed, and by order dated July 16, 1981, the cases were consolidated and referred to the Hearings Division for hearing and recommended decision. The hearing was held on March 23, 1982, at Denver, Colorado. Briefs have been filed by Geosearch and Resource Services Co. (RSC).

The only material allegation that remains of the various points raised by appellants and not disposed of by the Board in the above decisions is whether the winning offerors' drawing cards should be rejected for violation of the sole party in interest regulation, 43 CFR Section 3102.7 (1979). That regulation provides in part:

A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interests of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer . . .

Each of the eight drawings was won by an individual who participated in the drawing with the assistance of respondent filing service, RSC. The basic agreement between RSC and its individual client is as follows:

When I win a drawing, R.S.C. provides, at my option, the service to sell the rights I have won. This agency contract for sale is available only after the drawing is completed. Any final negotiated price is subject to my approval. If I utilize R.S.C.'s agency contract for sale and they or I obtain a buyer during the 5-year term of the contract, I understand the service fee to R.S.C. is as follows:

OUTRIGHT SALE OF OIL & GAS RIGHTS

\$1 to \$200,000.00 - - Service fee to R.S.C. 16%  
Over \$200,000.00- - Service fee to R.S.C. 12%

IN EVENT OF ROYALTY PAYMENTS

\$1 to \$200,000.00  
Annually- - - - - Service fee to R.S.C. 16%  
Over \$200,000.00  
Annually- - - - - Service fee to R.S.C. 12%

If I do not receive at least \$10,000 gross in aggregate from a sale negotiated by R.S.C., they will process up to 300 additional applications which I may choose to make free of their service charge.

This basic agreement has been held by the Board not to create an interest in the filing service because its client has the option to avail itself, as it chooses, of the company's offer to sell the lease for him at a commission. Erving J. Powers, 45 IBLA 186 (1980); Geosearch Inc., 40 IBLA 267 (1979); Geosearch Inc., 39 IBLA 49 (1979). However, in addition to this basic agreement, in 1977, RSC instituted a referral program whereby existing RSC clients were encouraged to refer persons to RSC who were not then clients of RSC. If the person referred to RSC took out a plan with the company, if that person subsequently won a lease, and if that person then chose to use RSC as a sales agent for the lease, the person originally making the referral would be entitled to payment of the equivalent of two percent of the cash consideration received for the lease up to a maximum of \$2,000.00. The Board recognized that an RSC client who wins at a drawing is free to negotiate sales with others and need not avail itself of RSC's sales agency agreement, but was concerned that the referral arrangement might create possibilities for violations in that there might be undisclosed agreements, understandings, or arrangements between the referring client and



the referred client which would create an interest requiring disclosure on the drawing entry card (DEC).

At the hearing on March 23, 1982, appellants' attorney, Mr. Leslie, agreed that the protests on leases W67767, W67982, W64073, and W69088, should be dismissed because there was no referral program involved with respect to them. All parties present agreed to said dismissal and the protests with respect to these leases were dismissed at that time. The corporate entities who appeared at the hearing as assignees, Cities Service Co. (W64073), Coquina Oil Co. (W67767), and General American Oil Co. of Texas (W67982) were therefore relieved of any further participation in the proceeding.

In three of the remaining leases, W64105, W66787, and W69701, the first priority drawees were individuals who had been referred to RSC by other clients of RSC. Pamela J. Haley, who won the right to lease W64105, in May 1978, had been referred to RSC by R. L. Haley. Subsequently, she entered into a sales agency agreement with RSC, and R. L. Haley received a referral fee of \$704.00 from RSC as a result of her decision to use RSC as a sales agent. However, Mrs. Haley stated in her affidavit (Ex. R-5), that she never had any agreement, contract, or understanding, disclosed or undisclosed, oral or written, formal or informal, with Mr. Haley or any other person, that she would use RSC as a sales agent if she were successful in an oil and gas lease drawing and that she understood that she had the freedom to choose any person or entity to act as sales agent for any lease negotiation, and that she chose RSC of her own free will.

Edwin Reger was the first drawee to lease W69701 in September 1979. Mr. Reger had been referred to RSC by Mr. E. H. Mulder. Mr. Reger also entered into a sales agency agreement with RSC following the drawing, and as a result of his referral of Mr. Reger and Mr. Reger's decision to use RSC as a sales agent, Mr. Mulder received a referral fee from RSC. Mr. Reger stated in his affidavit (Ex. R-3), that he had no agreement, contract, or understanding, disclosed or undisclosed, oral or written, formal or informal, with Mr. Mulder or with any other person, that he would use RSC as a sales agent if he were successful in a drawing. He also chose RSC as his sales agent of his own free will.

Stefan Eusch, who had been referred to RSC by Mr. Werner Klomsdorf was first drawee to lease W66787. He also stated in his affidavit that he had no agreement, contract, or understanding, disclosed or undisclosed, oral or written, formal or informal, with Mr. Klomsdorf or with any other person, that he would use RSC as a sales agent if he were the first drawee in a gas lease drawing. He likewise chose RSC as his sales agent of his own free will.

Sole party in interest is defined in 43 CFR 3100.0 - 5 (b) in part:

Sole party in interest. A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. . . . . An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

Apparently, it is appellants' position that the referring party (R. L. Haley, Klomdsdorf, and Mulder) had some type of enforceable interest in the oil leases at the time the referred parties (Pamela Haley, Eusch, and Reger) became the successful drawees. But, it is clear that in each of the foregoing cases, the referring person had, at best, a hope or expectancy of some financial benefit which could only ripen if and when the referred person exercised the right of free choice to use RSC as a sales agent after the drawing. "A hope or expectation of sharing in the profits of a lease . . . is not the same as the right to share in such lease" and does not constitute an "interest" under the regulations. See John V. Steffens, et. al., 74 ID 46, 53 (1967). It is therefore concluded that appellants' allegations regarding the above three winning lease offers must be rejected and the protests dismissed.

With respect to lease W69700, there was no referral program involved, and it is RSC's position that any alleged regulatory violations with respect to this lease are beyond the scope of the remand order and should not be considered. However, this matter has been pending for some time, and it is only practical to consider all of appellant' allegations. Appellants' argue that the lease offer of Cherwin, the successful drawee, was in violation of the sole party and interest regulations because the check sent to RSC by Cherwin for participation in the leasing services program was a corporate check and not a personal check. The corporation involved

is Chicago Millmen's, Inc., owned equally by Cherwin and his two brothers, Ronald and Gerald. It is appellants' position that this created an interest in the corporation in the lease in question. Appellants' cite no authority for this argument, and it must be rejected. Cherwin testified in his deposition that he had a habit of using corporate and personal checks for personal business, and he repays corporate funds when used for personal expenses. He stated that he had no agreement with any other person to share in the lease, and that he held the entire interest in the lease. Absent some type of agreement, at best the corporation has only a right to repayment of the funds; certainly this is not an "interest" under the regulations and cases set out above.

Accordingly, appellants' protest of this lease (W69700) is dismissed.

Michael L. Morehouse  
Administrative Law Judge

[6]  
71 IBLA 148

